S.B. Civil Writ Petition No.2073/2000
M/s Aravali Cylinders Pvt. Ltd. Vs. State of Raj. & Ors.

19.02.2007

Hon'ble Mr. Justice Mohammad Rafiq

Mr. A.K. Bajpai for petitioner.
Mr. A.K. Sharma for respondents

Heard learned counsel for the parties.

The petitioner in this case has prayed for a mandamus directing the respondents to grant him incentive / rebate at the rate of 20% of the development charges together with interest at the rate of 24% per annum on the date it became entitled to such incentive / rebate. Shri A.K. Bajpai, the learned counsel for the petitioner contends that the lease deed was executed

in favour of the petitioner by the respondent RIICO on 9.11.1982 and therefore according to their Circular dated 6.3.1981, it was entitled to a rebate of 20% of the development charges because the company started production within the period of two years from the date of allotment. Such amount was liable to be refunded to the petitioner after two years. The petitioner was entitled to total incentive of Rs.1,02,010/- as the total area of the land allotted to it was 20000 sq. mtrs on which it raised the construction.

The respondents have contested the claim of the petition. Shri A.K. Sharma, the learned counsel for the respondent-RIICO submitted that the petitioner has concealed the material

facts in as much as the Circular dated 6.3.1981 stood superseded by a subsequent Circular of the RIICO dated 11.10.1985 according to which the allottees are entitled to rebate of 20% per sq. mtrs, i.e. Rs.5/- per sq. mtrs, if the unit goes into production within a period of two years. Shri A.K. Sharma invited attention of the Court towards the communication dated 2.8.86 addressed to the petitioner by the RIICO in which the petitioner allowed a total incentive of Rs.18,769.50 for the covered area of 1876.95 sq. mtrs and with that the security amount of Rs.10,000/- has been ordered to be refunded. Thus the total refundable amount comes to Rs.28769.50 but with this amount of refund, a sum of Rs.85458.45 has been held recoverable

from the petitioner out of which Rs.59048.40 was the amount of penalty of unauthorised construction raised by the petitioner in front set back and side set back. In this connection, he referred to para 5 of their Circular dated 11.10.85 which provides that in order to discourage unauthorised constructions and to regularise any such construction, which cannot be demolished, the RIICO may regularize it in accordance with the compounding rate as approved by its Infrastructure Development Committee and if any such amount is to be recovered as compounding fee, the same shall invariably be deducted / adjusted out of the rebate amount.

Shri A.K. Bajpai, the learned counsel for the petitioner rejoined and

submitted that the Circular dated 11.10.85 cannot be applied to the case of the petitioner because the lease deed in favour of the petitioner was executed on 9.11.1982 and at that time Circular dated 6.3.1981 was in vogue. According to him, the amount of incentive shall have to be counted on the basis of total land area which come to Rs.1,02,010/- and not 18,769.50/- because land area alloted to the petitioner was 20000 sq. mtrs.

Contention of the petitioner cannot be accepted because he has neither produced any such instruction of the earlier period which may suggest that the development charges are to be calculated on the basis of the total land area nor has he placed on record any other material or data to substantiate his

claim that this was the practice which the respondents had been following in such similar cases prior to issuance of Circular dated 11.10.85. Besides, the first communication which is under dispute is dated 2.1.1986 and the petitioner has chosen to wait for 20 long years to ultimately approach this Court by filing the present writ petition. The petitioner has reported to have already deposited the amount with the Estate Officer and its request for waiver of interest is pending consideration. In the facts of the case I do not find it a fit case where this Court in exercise of its powers of judicial review should make any interference particularly when the law is well settled that the Circulars / Instructions extending benefit of

concession / incentives have to be construed strictly and even if two views are possible on interpretation thereof, the view that is favourable to the revenue shall have to be preferred.

I therefore do not find any merit in this petition. The petition is accordingly dismissed with no order as to costs.

(Mohammad Rafiq),J.

Rs/-